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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Christoph T. Corvin

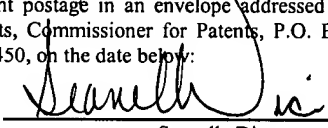
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For: MEDICAL DIAGNOSTIC
SYSTEM ACQUISITION AND
FINANCING METHOD AND
APARATUS

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§ Group Art Unit: 2161
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§ Examiner: Felten, Daniel S.
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§ Atty. Docket: GEMS:0123/YOD/SWA
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May 21, 2007 Date	 Seanelle Dice

Sir:

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

This Reply Brief is being filed in response to the Examiner's Answer mailed on March 21, 2007. Appellant respectfully requests that the Board consider Appellant's complete arguments set forth in the previously filed Appeal Brief along with the following remarks.

REMARKS

In the Final Office Action, the Examiner rejected claims 1-9, 11-19, 21-37, 39-43 and 45-60 under 35 U.S.C. § 103(a) in a first ground of rejection as obvious over Hartley-Urquhart (U.S. Patent No. 6,167,305, hereinafter “Hartley”) and McCormack, J., “*A Worldwide Network of Supplies*”, Health Data Management, p. 54-60 (July 1999) (hereinafter “McCormack”), and alternatively in a second ground of rejection, in further view of Kalbhen, J., “*Buying on the Web: A Site-Seers Guide*”, Materials Management in Health Care, Vol. 8, No. 7, p 16-20 (July 1999) (hereinafter “Kalbhen”). Appellant will address both grounds of rejection together in view of the alternative combinations formulated by the Examiner. Appellant will address the presently-claimed “financial analysis system” discussed by the Examiner in the Response to Arguments section of the Advisory Action. Lastly, Appellant will highlight deficiencies of the rejections with regard to other features of the present claims.

Independent Claims 1, 40, 49, 50, 55, 59, 60 – Financial Analysis System

Independent claims 1, 40, 49, and 50 recite “providing access to a financial analysis system for a medical resource supplier via a network.” Independent claims 50 and 60 recite “providing access to a financial module for a medical resource supplier via a network.” In operation, a customer or potential customer (e.g., hospital) uses the financial analysis system of the medical resource supplier to evaluate a specific transaction (e.g., purchase, lease, etc.) of a medical resource. In contrast, the Examiner reduces the claimed “financial analysis system” to an abstract process.

The Hartley reference is absolutely devoid of a financial analysis system or financial module, much less such a system associated with a medical resource supplier. The Examiner points, incorrectly, to the bank 230 in Hartley, which is clearly not a financial analysis system, as claimed. First, the bank 230 evaluates use of a supply-chain financing approach, and *does not analyze client data for obtaining a specific medical resource*. See Hartley, col. 3, lines 16-48; col. 4, lines 24-33. Second, even if the bank

230 could be characterized as a financial analysis system, as presently claimed, the bank 230 is associated with the buyer 220 and not a supplier 210. See Hartley, col. 3, lines 14-34; col. 4, lines 29-35. As clear from the present specification and the claim language itself, the “financial analysis system” (or module) is a constituent of a “medical resource supplier,” a phrase specifically recited in the claims. Surely, the Examiner does not equate a bank with a medical resource supplier. At most, the bank 230 operates for the *buyer 220* and is *not* associated with a medical resource *supplier*, as claimed.

Furthermore, the secondary references, McCormack and Kalbhen, are also absolutely devoid of “providing access” to a “financial analysis system” or “financial module.” Instead, McCormack is directed to the electronic exchange of purchasing-related information, such as product availability, purchase orders, invoices, and payments. See, e.g., McCormack, ¶ 4. Kalbhen merely provides a list of on-line purchasing sites for used medical equipment. See, e.g., Kalbhen, page 1. Kalbhen does not disclose a “financial analysis system” or “financial module,” as claimed. In view of these deficiencies, independent claims 1, 40, 49, 50, 55, 59, and 60, and their dependent claims, are patentable over Hartley, McCormack, and Kalbhen, whether taken alone or in combination.

Independent Claims 1, 33, 40, 49 – Electronic Form/Fields

Independent claims 1 and 49 recite “providing a network interface for communication with the financial analysis system [of a medical resource supplier], the network interface including an electronic form for entering client data for medical resources.” Independent claim 33, as amended, recites “providing an electronic interface for exchanging information between a client and the transaction system, wherein the interface has fields for entering client data.” Independent claim 40, as amended, recites “providing a communication interface comprising *electronic fields* for transmitting client data to the financial module.”

To the contrary, the cited references, whether taken alone or in combination, do not teach or suggest an *electronic form* or *electronic fields* for entering or exchanging client data. For example, while Hartley discloses the transmission of a purchase order 235 via an electronic link 240, Hartley clearly does not teach or suggest an electronic form or electronic fields for entering client data. *See* Hartley, col. 4, lines 29-52. Indeed, the Hartley purchase order (referred to by the Examiner) could simply be a hardcopy (non-electronic) form completed non-electronically by hand, and then scanned into a electronic file for transfer (i.e., as an attachment). In any case, it is clear that the Hartley does not expressly nor inherently (i.e., not necessarily present) disclose an electronic form having electronic fields. In addition, the Examiner has not suggested that such an awkward modification of Hartley would be obvious.

In addition, the present claims and specification are very clear in that an interface is provided so that a client or buyer (e.g., hospital) can input data (via an electronic form having data fields) directly to a financial analysis system of the medical resource supplier. Appellant emphasizes that the purchase order or associated electronic system disclosed in Hartley does not provide an interface for communicating directly with a system of the supplier, as claimed. *See, e.g.*, Hartley, col. 4, lines 43-45 and 49-53.

The secondary references are also deficient. While the McCormack reference may disclose the transfer of a purchase order as an attachment of an electronic message, for example, McCormack plainly does not disclose electronic forms or fields for entering client data. *See* McCormack, ¶ 4. After careful review of the list of “purchasing sites” in Kalbhen, the cited reference does not disclose an electronic form or electronic fields for entering or exchanging client data. *See, generally*, Kalbhen, pages 1-4. In view of the foregoing, independent claims 1, 33, 40, and 49, and their dependent claims are patentable over Hartley, McCormack and Kalbhen, taken alone or in combination.

Independent Claims 1, 17, 33, 40 – Client Trade-in Data/Information

Independent claim 1 recites “receiving *client trade-in data* for a purchasing transaction for medical resources.” Independent claim 17 recites “wherein the client data comprises *trade-in data* for a client trade-in with the financial transaction.” Independent claim 33 recites “receiving *client trade-in information* for a purchasing transaction for medical resources.” Independent claim 40 recites “receiving *client trade-in information* at the financial module.”

Conversely, the Hartley reference clearly fails to teach or suggest *client trade-in data* or information. Instead, Hartley is directed to a supply-chain financing system and evaluation of such a system. *See* Hartley, col. 2, lines 14-45; col. 3, lines 16-25. Further, while McCormack and Kalbhen may mention the sale of used equipment over the Internet, the cited references clearly do not teach or suggest *client trade-in data or information*. *See* McCormack, page 2; Kalbhen, page 1. Appellant respectfully stresses that the presently claimed subject matter is not simply directed to a purchasing system that may incorporate supply-chain management, or to the electronic exchange of information, but is directed to specific features recited in the claims. Here, the cited references do not teach *client trade-in data or client trade-in information* recited within the context of the instant claims.

Appellant is not surprised that the Examiner did not cite a specific passage of McCormick in his incorrect contention that “McCormick discloses receiving client trade data.” *See* Final Office Action, page 3. After all, McCormick fails to disclose such data. Clearly, again, while McCormick mentions the sale of used equipment over the Internet, it is absolutely devoid of the concept of client trade-in data. *See* McCormack, page 2. McCormick or any of the cited references simply fail to address or account for trade-in data of a client. Therefore, claims 1, 17, 33, and 40, and their dependent claims are patentable over Hartley, McCormack, and Kalbhen, taken alone or in combination.

Independent Claims 1, 17, 33, 40, 49-60 – Financial Transaction Options

Independent claims 1, 33, 40, 49, 50, and 53-60 recite “*providing a plurality of financial transaction options*” which are “tailored to the client data,” and “*transmitting the plurality of financial transaction options* to a client via the network.” Independent claims 17, 51, and 52 recite a “financial analysis module being configured to evaluate the client data and to *generate a plurality of financial transaction options* tailored to the client data.” In stark contrast, the cited references, whether taken alone or in combination, do not teach or suggest a financial analysis system or module that generates a plurality of financial transaction options. Likewise, the cited references do *not* disclose the transmission of financial transaction options.

In Hartley, for example, the buyer 220 is presented with no financial transaction options at all. See Hartley, col. 4, lines 53-67. In the Hartley system, the buyer 220 simply accepts the goods, and the bank 230 finances the goods and forwards payment to the supplier 210. See Hartley, col. 5, lines 26-30. No options whatsoever are provided to either the buyer 220 or seller 210. Indeed, the bank 230 does not even generate options but merely calculates the payment to the supplier 210. See Hartley, col. 5, lines 46-50; col. 8, lines 50-67. Further, while the Hartley system may accommodate a rejection of the transaction by the buyer 220, the buyer 220 is plainly not provided with a plurality of financial transaction options, as claimed. See Hartley, col. 9, lines 14-37.

Moreover, the secondary references, McCormack and Kalbhen, are also deficient. In McCormack, the Internet or a network is used to exchange information electronically with no presentation of “options.” See, e.g., McCormack, ¶ 4. As for Kalbhen, Appellant has carefully reviewed of the Kalbhen summary list of purchasing sites and there is no indication that financial transaction options are generated or transmitted. See Kalbhen, pages 1-4. Both McCormack and Kalbhen are absolutely devoid of a financial analysis system or module for *generating a plurality of financial transaction options* (tailored to

client data) or *providing those transaction options to a client*. See McCormack, pages 1-2 and 5; Kalbhen, pages 1-4.

In the Final Office Action, the Examiner stated that “[i]n regards to the prior art not suggesting ‘providing a plurality of financial transaction options that are tailored to the client’ it is interpreted that each invoice and purchase order are inherently based upon customized parameters.” Final Office Action, page 4 (emphasis added). In response, Appellant interprets the Examiner’s comments to address two separate issues. First, the Hartley or McCormick purchase orders do not provide a single financial transaction option, much less a plurality of financial transaction options, as claimed. It should be noted that financial transaction options are not presented on purchase orders. After all, the purchase order is merely a request for a product from a buyer to a supplier. Second, all three cited references are absolutely devoid of tailoring financial transaction options (or tailoring the upstream forms for that matter) to a specific client or customer. In view of these deficiencies of the cited references, independent claims 1, 17, 33, 40, 49-60, and their dependent claims are believed to be patentable over the cited combinations.

Features of Dependent Claims Missing from the References

Appellant emphasizes that the dependent claims are also patentable over the cited combinations by virtue of the subject matter that the dependent claims separately recite. For example, dependent claim 3 recites “tailoring the form for the client according to the portion of the client data.” Conversely, the Hartley and McCormack references disclose a purchase order (PO) form, for example, with no teaching or suggestion that the form or format be altered or tailored to a specific client based on that client’s data. See Hartley, col. 4, lines 41-55; McCormack, ¶ 4. Indeed, in Hartley, the PO form must be standardized generically so that the PO data can be matched against the Vendor Profile format in the disclose supply-chain system. See Hartley, col. 8, lines 50-51. While the *data entered* into the forms disclosed in these two references *may change* per the particular customer, aspects of the forms themselves are not tailored to a specific

customer. *See* Hartley, col. 4, lines 41-55; McCormack, ¶ 4. Similarly, Kalbhen does not disclose any type of form tailored to a client. *See* Kalbhen, pages 10-4. Accordingly, dependent claim 3 is believed to be patentable over the cited references, taken alone or in combination, for this reason as well.

Dependent claim 19 recites a financial module comprising “tax rules for evaluating tax consequences of the financial transaction.” Conversely, the cited references are *absolutely devoid* of a financial module having *tax* rules for assessing the impact of *taxes* on a particular transaction. *See, e.g.*, Hartley, col. 3, lines 8-63; col. 5, lines 31-67; McCormack, ¶ 4. While Hartley discloses a supply-chain financing method, McCormack discloses the electronic exchange of purchasing information, and Kalbhen discloses sites for the on-line purchase of used medical equipment, the references clearly do not consider tax consequences of a given financial transaction. *See id.* Accordingly, dependent claim 19 is believed to be patentable over the cited references, taken alone or in combination, for this reason as well.

Dependent claim 39 recites “a plurality of service options.” In contrast, the cited references never discuss the issue of *servicing* a medical resource. *See, e.g.*, Hartley, col. 3, lines 8-63; McCormack, page 1; Kalbhen, pages 1-4. Accordingly, dependent claim 39 is believed to be patentable over the cited combinations for this reason as well.

The Rejections of the Dependent Claims are Improper

Appellant stresses that the Examiner failed to meet his burden under 35 U.S.C. § 103 in rejecting the dependent claims because the Examiner did not address the subject matter separately recited in the dependent claims. *See, e.g.*, Office Action Mailed March 21, 2005, pages 2-3. To meet his burden of presenting a *prima facie* case of obviousness, the Examiner is required to address the specific elements of each and every claim rejected in the present application. *See In re Royka*, 180 U.S.P.Q. at 580; M.P.E.P. § 2144.03. Here, the Examiner fails to even address the subject matter of a single dependent claim.

Appellant must be given “a full and fair hearing.” M.P.E.P. § 706.07. Given that the Examiner has not met his burden, the rejections of the dependent claims should be withdrawn for this additional reason.

Furthermore, the Examiner has repeatedly ignored Appellant’s prior arguments regarding the features specifically recited in the dependent claims. This lack of response by the Examiner is contrary to the M.P.E.P. Indeed, “[w]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant’s argument and answer the substance of it.” M.P.E.P. § 707.07(d); *see also* 37 C.F.R. § 1.104; M.P.E.P. § 706.

Improper Combination - Lack of Objective Evidence of Reasons to Combine

In addition, the Examiner has not shown the requisite motivation or suggestion to modify or combine the cited references to reach the present claims. The Examiner must provide objective evidence, rather than subjective belief and unknown authority, of the requisite motivation or suggestion to combine or modify the cited references. *In re Lee*, 61 U.S.P.Q.2d. 1430 (Fed. Cir. 2002). Here, Appellant believes the Examiner employed impermissible hindsight in formulating the present rejection. For example, the Examiner combined the cited references based on the *conclusory and subjective statement* that it would have been obvious to integrate McCormack into Hartley because an artisan “would have recognized the growing trend in medical supply chain management along with the notoriously old and well known high costs associated with the supply chain and have sought [to] provide a system that would provide affordable, efficient and flexible financing for goods and services.” Office Action Mailed March 21, 2005, pp. 3-4 (emphasis added).

In other words, the Examiner asserted subjectively and in conclusory fashion that based on an undisclosed “trend” and undisclosed “high costs,” a skilled artisan would seek to provide a system that is good. See id. The Supreme Court has stated that the

obviousness analysis should be explicit. *See KSR Int'l Co. v. Teleflex, Inc.*, No. 04-1350, page 14 (U.S., decided April 30, 2007). “[R]ejections based on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *See id.* (quoting *In re Kahn*, 441 F.3d 977,988 (Fed. Cir. 2006)). Appellant respectfully requests that the Board direct the Examiner to withdraw the foregoing rejections under 35 U.S.C. § 103 for this additional reason.

Request Evidence to Support Official Notice

Lastly, as repeatedly noted by Appellant during prosecution, the Examiner has essentially taken Official Notice of facts outside of the record that the Examiner apparently believes are capable of demonstration as being “well-known” in the art. *See, e.g.*, Office Action Mailed March 21, 2005, pages 3-4. For example, the Examiner stated that an “artisan would have recognized the *growing trend* in medical supply chain management along with the notoriously *old and well known high costs* associated with the supply chain.” *Id.* at 3 (emphasis added). Appellant stresses that not only are the Examiner’s assertions confusing (e.g., the Examiner does not specify what “growing trend”), the asserted facts are not of “notorious character” or “capable of such instant and unquestionable demonstration to defy dispute.” *See* M.P.E.P. § 2144.03. Therefore, again, in accordance with M.P.E.P. § 2144.03, Appellant hereby traverses and challenges the Examiner’s use of Official Notice. *See* Response to Office Action mailed March 21, 2005. It should also be noted that Appellant has repeatedly requested that the Examiner produce evidence in support of the Examiner’s position.

Conclusion

Based upon the above points of clarification in conjunction with the arguments made in the previously filed Appeal Brief, Appellant believes that the claims comply with 35 U.S.C. § 103(a) and are allowable over the cited art. The Examiner's rejections, therefore, cannot stand. Appellant respectfully requests that the Board withdraw the outstanding rejections and pass the present application to allowance.

Respectfully submitted,

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